

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-35360-2022
Date of decision : 17.08.2023

DALIP KUMAR

... Petitioner(s)

Versus

SACHIN SINGAL

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Ms. Shubreet Kaur Saron, Advocate
for the petitioner(s).

Mr. Rajat Malhotra, Advocate
for the respondent.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Sections 482/483 Cr.P.C. is for quashing of the order dated 25.07.2022 (Annexure P-12) passed by the JMIC, Ludhiana dismissing the application (Annexure P-11) filed by the petitioner under Sections 219, 220 Cr.P.C. in complaint dated 05.07.2018 (Annexure P-1) titled as Sachin Singal Versus Dalip Kumar, COMP/9225/2018 under Section 138 of the NI Act, 1881.

2. The brief facts of the case are that the petitioner/accused is alleged to have purchased cloth and cloth items on credit basis from the respondent/complainant. To discharge his legal liability, the petitioner issued a cheque No.567928 dated 23.03.2018 for an amount of Rs.15,35,534/- and cheque No.790906 dated 23.03.2018 for an amount of Rs.4,13,996/- both drawn on Punjab National Bank, Overlock Road, Ludhiana. The said cheques came to be dishonoured leading to the institution of the first complaint No.COMP/6718/2018 dated 15.05.2018

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titled as Sachin Singal Versus Dalip Kumar and the consequent summoning order dated 17.05.2018 under Section 138 of the NI Act.

3. Meanwhile, another cheque was issued purportedly for the discharge of the legal liability bearing Cheque No.970908 dated 27.03.2018 for an amount of Rs.11,00,000/-. The said cheque also came to be dishonored leading to the institution of a second complaint No.COMP/9225/2018 dated 05.07.2018 titled as Sachin Singal Versus Dalip Kumar under Section 138 of the Negotiable Instruments Act, 1881 and the consequent summoning order dated 06.07.2018. The copy of the complaint and summoning order are attached as Annexures P-1 and P-4 to the petition.

4. During the course of proceedings in the said two complaints, an application was moved under Sections 219 and 220 Cr.P.C. praying that as the cheques had been dishonoured within a time span of one year, therefore, the arguments in both the complaints were to be heard as one and the trials in both the cases ought to be consolidated. Vide order dated 25.07.2022, the said application was dismissed in the first complaint No.COMP/6718/2018 dated 15.05.2018. Against the said dismissal, CRM-M-35362-2022 was preferred.

5. A similar application was moved in the instant complaint No.COMP/9225/2018. The copy of the said application is attached as Annexure P-11 to the petition. The said application also came to be dismissed vide order dated 25.07.2022. The copy of the said order is attached as Annexure P-12 to the petition. This order is under challenge in the instant petition.

6. The learned counsel for the petitioner contends that in terms of Sections 219 and 220 Cr.P.C. the cheques in both the complaints pertained to the same transaction between the same parties as was evident from the ledger/account statement Ex.C1 (part of Annexure P-3). The cheques had been issued within a span of 12 months. The evidence in one case was copied/ reproduced and read in both the complaints as was evident from the orders dated 10.10.2019 (Annexure P-7 and P-8) respectively. The complainant had suffered a statement dated 10.10.2019 (Annexure P-9) that he had no objection if the cross-examination already recorded be read in evidence in both the complaints. The respondent/complainant had chosen not to file a reply to the application dated 25.07.2022 by the petitioner under Sections 219, 220 Cr.P.C. which would show that the complainant did not have any serious objection to the claim of the petitioner for consolidation of the trial. Though, the applications had been dismissed in each of the cases, the Trial Court had passed an order that the cases would be decided at the same time and on the same day by hearing the arguments. In fact, as the transactions were pertaining to the same ledger account and between the same parties, assuming the trials were held separately, even then, post-conviction, the sentence imposed in the subsequent complaint would run concurrently with the sentence imposed in the first complaint. She, therefore, contends that the trial arising out of the instant complaint be clubbed with that arising out of the first complaint No.COMP/6718/2018 dated 15.05.2018 and after clubbing, a single judgment be passed. Reliance is placed on the judgments in the cases of **In Re: Expeditious**

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Trial of cases under Section 138 of the NIT Act, 1881, Writ petition (Crl.) No.2 of 2020, decided on 16.04.2021, Shyam Pal Versus Dayawati Besoya & another, 2016(4) R.C.R.(Criminal) 790, Benson Versus State of Kerala, 2016(4) R.C.R. (Criminal) 602, V.K. Bansal Versus State of Haryana & others, 2013(3) R.C.R. (Criminal) 983, and Ravinder Singh Versus The Punjab Agro Foodgrains Corporation Ltd. & another, CRR-3569-2017, decided on 27.03.2019.

8. On the other hand, the learned counsel for the respondent/complainant contends that no such prayer for consolidation of the cases had been made as per the application dated 05.07.2022. In fact, the only prayer of the petitioner in each case was that the arguments in both the complaints be heard as one. Even otherwise each invoice constituted a different transaction and merely because the ledger account was the same could not lead to the consolidation of the cases. He, therefore, contends that the question of consolidation did not arise. Reliance is placed on the judgments in *K. Padamaja Rani Versus The State of Telangana & another, SPL (Crl.) No.(s).6742/2023* and *Vishwanath Jha Versus State of Haryana & another, CRR Nos.397, 398, 399, 400, 402, 404, 417, 421 of 2018, decide on 29.05.2018.*

9. I have heard the counsel for the parties and gone through the record.

10. Before proceeding further in the matter, it would be apposite to refer to the relevant provisions of the Cr.P.C.

Section 219 Cr.P.C, reads as under:-

219. Three offences of same kind within year may be charged together.

(1) When a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, whether in respect of the same person or not, he may be charged with, and tried at one trial for, any number of them not exceeding three.

(2) Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Indian Penal Code (45 of 1860) or of any special or local law:

Provided that, for the purposes of this section, an offence punishable under section 379 of the Indian Penal Code (45 of 1860) shall be deemed to be an offence of the same kind as an offence punishable under section 380 of the said Code, and that an offence punishable under any section of the said Code, or of any special or local law, shall be deemed to be an offence of the same kind as an attempt to commit such offence, when such an attempt is an offence.

Section 220 Cr.P.C, reads as under:-

220. Trial for more than one offence.

(1) If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.

(2) When a person charged with one or more offences of criminal breach of trust or dishonest misappropriation of property as provided in sub- section (2) of section 212 or in sub-section (1) of section 219, is accused of committing, for the purpose of facilitating or concealing the commission of that offence or those offences, one or more offences of falsification of accounts, he may be

charged with, and tried at one trial for, every such offence.

(3) If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences.

(4) If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with, and tried at one trial for the offence constituted by such acts when combined, and for any offence constituted by any one, or more, of such acts.

(5) Nothing contained in this section shall affect section 71 of the Indian Penal Code (45 of 1860).

Section 427 Cr.P.C, reads as under:-

427. Sentence on offender already sentenced for another offence.

(1) When a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or imprisonment for life, such imprisonment or imprisonment for life shall commence at the expiration of the imprisonment to which he has been previously sentenced, unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence:

Provided that where a person who has been sentenced to imprisonment by an order under section 122 in default of furnishing security is, whilst undergoing such sentence, sentenced to imprisonment for an offence committed prior to the making of such order, the latter sentence shall commence immediately.

(2) When a person already undergoing a sentence of imprisonment for life is sentenced on a subsequent conviction to imprisonment for a term or imprisonment for life, the subsequent sentence shall run concurrently with such previous sentence.

11. The relevant judgments of the Hon'ble Supreme Court and this Court relied upon by the petitioner are as under:-

The Hon'ble Supreme Court in **In Re: Expeditious Trial of cases under Section 138 of N.I. Act, 1881, Writ petition (Crl.) No.2 of 2020, decided on 16.04.2021**, held as under:-

13. Section 219 of the Code provides that when a person is accused of more offences than one, of the same kind, committed within a space of 12 months, he may be tried at one trial for a maximum of three such offences. If more than one offence is committed by the same person in one series of acts so committed together as to form the same transaction, he may be charged with and tried at one trial, according to Section 220. In his preliminary report, the learned Amici Curiae suggested that a legislative amendment is required to Section 219 of the Code to avoid multiplicity of proceedings where cheques have been issued for one purpose. In so far as Section 220 of the Code is concerned, the learned Amici Curiae submitted that same/similar offences as part of the same transaction in one series of acts may be the subject matter of one trial. It was argued by the learned Amici Curiae that Section 220 (1) of the Code is not controlled by Section 219 and even if the offences are more than three in respect of the same transaction, there can be a joint trial. Reliance was placed on a judgment of this Court in Balbir v. State of Haryana & Anr. to contend that all offences alleged to have been committed by the

accused as a part of the same transaction can be tried together in one trial, even if those offences may have been committed as a part of a larger conspiracy.

14. The learned Amici Curiae pointed out that the judgment of this Court in Vani Agro Enterprises v. State of Gujarat & Ors. needs clarification. In Vani Agro (supra), this Court was dealing with the dishonour of four cheques which was the subject matter of four complaints. The question raised therein related to the consolidation of all the four cases. As only three cases can be tried together as per Section 219 of the Code, this Court directed the Trial Court to fix all the four cases on one date. The course adopted by this Court in Vani Agro (supra) is appropriate in view of the mandate of Section 219 of the Code. Hence, there is no need for any clarification, especially in view of the submission made by the learned Amici that Section 219 be amended suitably. We find force in the submission of the learned Amici Curiae that one trial for more than three offences of the same kind within the space of 12 months in respect of complaints under Section 138 can only be by an amendment. To reduce the burden on the docket of the criminal courts, we recommend that a provision be made in the Act to the effect that a person can be tried in one trial for offences of the same kind under Section 138 in the space of 12 months, notwithstanding the restriction in Section 219 of the Code.

15. Offences that are committed as part of the same transaction can be tried jointly as per Section 220 of the Code. What is meant by “same transaction” is not defined anywhere in the Code. Indeed, it would always be difficult to define precisely what the expression means. Whether a transaction can be regarded as the same would necessarily depend upon the particular

facts of each case and it seems to us to be a difficult task to undertake a definition of that which the Legislature has deliberately left undefined. We have not come across a single decision of any court which has embarked upon the difficult task of defining the expression. But it is generally thought that where there is proximity of time or place or unity of purpose and design or continuity of action in respect of a series of acts, it may be possible to infer that they form part of the same transaction. It is, however, not necessary that every one of these elements should co-exist for a transaction to be regarded as the same. But if several acts committed by a person show a unity of purpose or design that would be a strong circumstance to indicate that those acts form part of the same transaction⁷. There is no ambiguity in Section 220 in accordance with which several cheques issued as a part of the same transaction can be the subject matter of one trial.

16. The learned Amici Curiae have brought to our notice that separate complaints are filed under Section 138 of the Act for dishonour of cheques which are part of the same transaction. Undue delay in service of summons is the main cause for the disproportionate accumulation of complaints under Section 138 before the courts. The learned Amici suggested that one way of reducing the time spent on service of summons is to treat service of summons served in one complaint pertaining to a transaction as deemed service for all complaints in relation to the said transaction. We are in agreement with the suggestion made by the learned Amici Curiae. Accordingly, the High Courts are requested to issue practice directions to the Trial Courts to treat service of summons in one complaint forming part of a transaction, as deemed service in respect of all the

complaints filed before the same court relating to dishonour of cheques issued as part of the said transaction.

(emphasis supplied)

The Hon'ble Supreme Court in *Shyam Pal Versus Dayawati Besoya & another, 2016(4) R.C.R.(Criminal) 790*, held as under:-

(13) Though this provision has fallen for scrutiny of this Court umpteen times, we can profitably refer to one of the recent pronouncements in V.K. Bansal Vs. State of Haryana and Another 2013(3) RCR (Civil) 1052:2013(3) RCR (Criminal) 983: 2013(4) Recent Apex Judgments (R.A.J.) 680: (2013) 7 SCC 211 where it was held that though it is manifest from Section 427(1), that the Court has the power and discretion to issue a direction that a subsequent sentence shall run concurrently with the previous sentences, the very nature of the power so conferred, predicates that the discretion, would have to be exercised along judicial lines or not in a mechanical or pedantic manner. It was underlined that there is no cut and dried formula for the Court to follow, in the exercise of such power and that the justifiability or otherwise of the same, would depend on the nature of the offence or offences committed and the attendant facts and circumstances. It was however postulated, that the legal position favours the exercise of the discretion to the benefit of the prisoners in cases where the prosecution is based on a single transaction, no matter even if different complaints in relation thereto might have been filed. The caveat as well was that such a concession cannot be extended to transactions which are distinctly different, separate and independent of

each other and amongst others where the parties are not the same.

(14) The imperative essentiality of a single transaction as the decisive factor to enable the Court to direct the subsequent sentence to run concurrently with the previous one was thus underscored. It was expounded as well that the direction for concurrent running of sentence would be limited to the substantive sentence alone.

(15) In a more recent decision of this Court in Benson vs. State of Kerala 2016(4) RCR (Criminal) 602: 2016(5) Recent Apex Judgments (R.A.J.) 716, Criminal Appeal No.958 of 2016 (since disposed of on 03.10.2016) and the accompanying appeals, arising from the conviction of the appellant from his prosecution on the offences proved, this Court in the singular facts as involved and having regard to the duration of his incarceration and the remission earned by him, extended the benefit of such discretion and directed that the sentences awarded to him in those cases would run concurrently. It was noticeably recorded that the offences in the cases under scrutiny had been committed on the same day. The benefit of the discretion was accorded to the appellant therein referring as well to the observation in V.K. Bansal (supra) that it is difficult to lay down any straight jacket approach in the matter and that a direction that the subsequent sentence would run concurrently or not, would essentially depend on the nature of the offence or offences and the overall fact situation. Understandably, the appellant was required to serve the default sentence as awarded with the direction that if the fine imposed had not been deposited, the default sentence or sentences would run consecutively.

(16) Reverting to the facts as obtained in the present appeal, we are of the comprehension, on an appreciation thereof as well as the duration of the appellant's custody, as is evidenced by the certificate to that effect, that the appellant is entitled to the benefit of the discretion contained in Section 427 of the Code. In arriving at this conclusion we have, as required, reflected on the nature of the transactions between the parties thereto, the offences involved, the sentences awarded and the period of detention of the appellant as on date.

(17) It is thus ordered that the substantive sentences of 10 months simple imprisonment awarded to the appellant in the two complaint cases referred to hereinabove would run concurrently. Needless to say, the appellant would have to serve the default sentences, if the fine by way of compensation, as imposed, has not been paid by him. The appeals are thus allowed to this extent. The appellant would be entitled to all consequential reliefs with regard to his release from custody as available in law based on this determination.

(emphasis supplied)

The Hon'ble Supreme Court in **Benson Versus State of Kerala, 2016(4) R.C.R. (Criminal) 602**, held as under:-

7. In V.K. Bansal v. State of Haryana and Another, 2013(3) RCR (Criminal) 983 : 2013(3) RCR (Civil) 1052 : 2013(4) Recent Apex Judgments (R.A.J.) 680: (2013) 7 SCC 211 it was stated by this Court:

"It is manifest from Section 427(1) that the Court has the power and the discretion to issue a direction but in the very nature of the power

so conferred upon the Court the discretionary power shall have to be exercised along the judicial lines and not in a mechanical, wooden or pedantic manner. It is difficult to lay down any straitjacket approach in the matter of exercise of such discretion by the courts. There is no cut and dried formula for the Court to follow in the matter of issue or refusal of a direction within the contemplation of Section 427(1). Whether or not a direction ought to be issued in a given case would depend upon the nature of the offence or offences committed, and the fact situation in which the question of concurrent running of the sentences arises."

This Court then went on to club various crimes in respect of which sentences were imposed upon the appellant therein in three groups; i) the first having 12 cases, ii) the second having 2 cases and iii) the third having a single case. This Court directed that substantive sentences within first two groups would run inter se concurrently and the substantive sentences in first two groups and that in respect of the case in the third group would run consecutively. The benefit was confined only in respect of substantive sentences and no qua sentences in default.

8. We have gone through the record and considered rival submissions. We do not find anything incorrect in the assessment made by the Courts below and in our view the orders of conviction recorded against the appellant in the present cases are quite correct. We also do not find anything wrong in the quantum of sentence imposed in respect of the respective crimes. However going by the sentence

calculation, the sentence imposed in respect of the first crime started with effect from 20.11.2003 and the last sentence would be over by 19.08.2022, which would effectively mean that the total length of sentences in aggregate would be around 19 years. We are not concerned with first eight matters and sentences imposed in respect of those crimes. The sentence in respect of 8th crime is presently running against the appellant and would be over on 30.08.2017.

9. The maximum sentence in respect of the present crimes is two years' rigorous imprisonment. As per the record, these crimes were committed on the same day. Having considered the matters, we deem it appropriate to direct that the sentences imposed in each of the cases, i.e. (i) CC No.158 of 2004, (ii) CC No. 1039 of 2003, (iii) CC No. 390 of 2004 and (iv) CC No. 1168 of 2006 namely those at Sl.Nos.9 to 12 respectively as indicated in the sentence chart in the communication dated 27.05.2016 shall run concurrently with the sentence imposed in Crime No.8 which is currently operative. We grant this benefit in respect of substantive sentences to the appellant but maintain the sentences of fine and the default sentences. If the fine as imposed is not deposited, the default sentence or sentences will run consecutively and not concurrently.

(emphasis supplied)

The Hon'ble Supreme Court in **V.K. Bansal Versus State of**

Haryana & others, 2013(3) R.C.R. (Criminal) 983, held as under:-

14. In. Madan Lal's case (supra) this Court relied upon the decision in Akhtar Hussain's case (supra) and affirmed the

direction of the High Court for the sentences to run concurrently. That too was a case under Section [138](#) of the Negotiable Instruments Act. The State was aggrieved of the direction that the sentences shall run concurrently and had appealed to this Court against the same. This Court, however, declined interference with the order passed by the High Court and upheld the direction issued by the High Court.

15. In conclusion, we may say that the legal position favours exercise of discretion to the benefit of the prisoner in cases where the prosecution is based on a single transaction no matter different complaints in relation thereto may have been filed as is the position in cases involving dishonour of cheques issued by the borrower towards repayment of a loan to the creditor.

16. Applying the above test to the 15 cases at hand we find that the cases against the appellant fall in three distinct categories. The transactions forming the basis of the prosecution relate to three different corporate entities who had either entered into loan transactions with the State Financial Corporation or taken some other financial benefit like purchase of a cheque from the appellant that was on presentation dishonoured. The 15 cases that have culminated in the conviction of the appellant and the award of sentences of imprisonment and fine imposed upon him may be categorised as under:

(1) Cases in which complainant-Haryana State Financial Corporation advanced a loan/banking facility to M/s. Arawali Tubes Ltd. acting through the appellant as its Director viz. No. 269-II/97; No. 549-II/97; No. 393-II/97; No. 371-II/97; No. 372-II/97; No. 373-II/97; No. 877-II/96; No. 880-II/96; No. 878-II/96; No. 876-II/96; No. 879-II/96; No. 485-II/96

(2) Cases in which complainant-Haryana State Financial Corporation advanced a loan/banking facility to the appellant to M/s Arawali Alloys Ltd. acting through the appellant as its Director viz. No. 156-II/1997 and No. 396-II/1998

(3) Criminal complaint No. 331-II/97 in which complainant-State Bank of Patiala purchased/discounted the cheque offered by Sabhyata Plastics acting through the appellant as its Director.

17. Applying the principle of single transaction referred to above to the above fact situations we are of the view that each one of the loan transactions/financial arrangements was a separate and distinct transaction between the complainant on the one hand and the borrowing company/appellant on the other. If different cheques which are subsequently dishonoured on presentation, are issued by the borrowing company acting through the appellant, the same could be said to be arising out of a single loan transaction so as to justify a direction for concurrent running of the sentences awarded in relation to dishonour of cheques relevant to each such transaction. That being so, the substantive sentence awarded to the appellant in each case relevant to the transactions with each company referred to above ought to run concurrently. We, however, see no reason to extend that concession to transactions in which the borrowing company is different no matter the appellant before us is the promoter/Director of the said other companies also. Similarly we see no reason to direct running of the sentence concurrently in the case filed by the State Bank of Patiala against M/s. Sabhyata Plastics and M/s. Rahul Plastics which transaction is also independent of any loan or financial assistance between the State Financial Corporation and the borrowing companies. We make it clear that the direction regarding concurrent running of sentence

shall be limited to the substantive sentence only. The sentence which the appellant has been directed to undergo in default of payment of fine/compensation shall not be affected by this direction. We do so because the provisions of Section 427 of the Criminal Procedure Code do not, in our opinion, permit a direction for the concurrent running of the substantive sentences with sentences awarded in default of payment of fine/compensation.

18. In the result, these appeals succeed but only in part and to the following extent :

(1) Substantive sentences awarded to the appellant by the Courts of Judicial Magistrate, First Class, Hissar and Additional Chief Judicial Magistrate, Hissar, in Criminal complaint cases No. 269-II/97; No. 549-II/97; No. 393- II/97; No. 371-II/97; No. 372-II/97; No. 373-II/97; No. 877-II/96; No. 880-II/96; No. 878-II/96; No. 876-II/96; No. 879-II/96; No. 485-II/96 relevant to the loan transaction between Haryana Financial Corporation and Arawali Tubes shall run concurrently.

(2) Substantive sentences awarded to the appellant by the Court of Judicial Magistrate, First Class, Hissar in Criminal complaint cases No. 156- II/1997 and No. 396-II/1998 between Haryana Financial Corporation and Arawali Alloys relevant to the transactions shall also run concurrently;

(3) Substantive sentences inter se by the Court of Judicial Magistrate, First Class, Hissar in the above two categories and that awarded in complaint case No. 331-II/97 shall run consecutively in terms of section 427 of the Code of Criminal Procedure.

(4) No costs.

(emphasis supplied)

This Court in Ravinder Singh Versus The Punjab Agro Foodgrains Corporation Ltd. & another, CRR-3569-2017, decided on 27.03.2019, held as under:-

15. In the present case, it certainly cannot be disputed that all the three cheques, for dishonour of which three complaints were filed, had infact been issued for discharge of the liability of `3,96,00,000/- arising out of the same transaction. The relevant details pertaining to the said cheques, complaints and judgments passed by the lower Courts are stated as follows:-

Cheque number and date	Amount of Cheque (in `)	Complaint No.	Date of judgment passed by JMIC	Date of judgment passed by ASJ	Criminal Revision No. (High Court)
0023908/ 21.4.2005	1,50,00,000/	954 dated 23.4.2005	19.11.2013	15.9.2017 (Cr.A. No.45 of 6.12.2013)	CRR-3577- 2017
0023909/ 21.6.2005	1,46,00,000/	238/2 dated 6.10.2005	8.11.2013	15.9.2017 (Cr.A. No.46 of 6.12.2013)	CRR-3571- 2017
0023907/ 18.03.2005	1,00,00,000/ -	86/2 dated 14.6.2005	19.11.2013	15.9.2017 (Cr.A. No.47 of 6.12.2013)	CRR-3569- 2017

16. The cheques having been issued for discharge of a liability arising out of the same transaction, the petitioner can certainly be extended the benefit of concurrency of sentence of imprisonment, keeping in view the ratio of judgment of Hon'ble the Apex Court rendered in Shyam Pal's case (supra). As such, it is ordered that the substantive sentence of imprisonment, in the present case, shall run concurrently with the sentence imposed in the other two complaints i.e. in complaint No.238/2 dated 6.10.2005 pertaining to dishonour of a cheque bearing No.0023909 dated 31.6.2005 for an amount of `1,46,00,000/- and complaint No.954 dated 23.4.2005 pertaining to dishonour of a cheque bearing No.0023908 dated 21.04.2005 for an amount of `1,50,00,000/-. However, the fine as imposed upon the petitioner is enhanced from `2,000/- to `25,00,000/-, keeping in view the amount of the dishonoured cheque, which is `1,00,00,000/-. The fine so recovered shall be paid as compensation to the complainant. It will not be out of place to mention that in Shyam Pal's case (supra), a fine of `6,50,000/- in each of the two cases had been

imposed, although the cheque in each of the case was for an amount of `5,00,000/-. In these circumstances, the fine of `25,00,000/-, to be paid as compensation to complainant upon realisation, which is infact much lesser than the cheque amount, is being imposed, while also bearing in mind that that the sentences in all the three cases are being reduced and being ordered to run concurrently.

17. Thus, while reducing the sentence to simple imprisonment for one year and six months and while ordering the sentence of imprisonment to run concurrently in respect of all the three complaints, the petitioner is being imposed fine amounting to Rs.25,00,000/-. as indicated above. The fine so recovered shall be paid as compensation to the complainant. In case of nonpayment of fine, the petitioner shall further undergo imprisonment for 4 months. It is clarified that in case of non-payment of fine, the default imprisonment of 4 months in lieu thereof will run consecutively in respect of each of the three cases.

(Emphasis supplied)

12. The judgments of the Hon'ble Supreme Court and this Court relied upon by the respondent are as under:-

The Hon'ble Supreme Court in *K. Padamaja Rani Versus The State of Telangana & Another, SPL (Crl.) No.(s).6742/2023*, held as under:-

“Heard Mr. Anand Padmanabhan R., the learned counsel appearing for the petitioner.

The counsel submits that the grievance of the petitioner is not in reference to her conviction but on account of consecutive sentence ordered for the four cases against her, under the Negotiable Instruments Act, 1881. The counsel places reliance on V.K. Bansal v. State of Haryana & Anr. reported in (2013) 7 SCC 211

to point out that for a single transaction, the Court should have ordered for concurrent running of sentence instead of consecutive sentence, as has happened in this case.

We have perused the ratio in the aforesaid judgment and find that only when the conviction arise out of the single transaction, concurrent sentence would be merited. But present are the cases where there were several transactions over a period of time pertaining to supply of raw material to the petitioner for which the cheques tendered towards payment, were dishonoured. Accordingly, we find that the petitioner can have no benefit out of the ratio in V.K. Bansal (supra).

The Special Leave Petitions accordingly stand dismissed.

Pending application(s), if any, shall stand closed.
(emphasis supplied)

This Court in **Vishwanath Jha Versus State of Haryana & another, CRR Nos.397, 398, 399, 400, 402, 404, 417, 421 of 2018, decide on 29.05.2018**, held as under:-

“23.The sole argument raised by the learned Counsel for the applicant/petitioner is that as per the Ledger Account w.e.f. 01.04.2011 to 13.05.2014, a sum of Rs.12,42,289/- was outstanding for the material supplied to him and all the eight cheques were issued on account of single transaction. Thus, the sentence should be ordered to run concurrently instead of consecutively/separately with main Complaint No.929 of 2014.

24. Upon notice of the applications, reply by way of CRM No.19530 of 2018 in CRM No.18272 of 2018 in CRR No.400 of 2018 has been filed by respondent No.2/complainant and learned Counsel for respondent

No.2 states that the same be also read as reply in all other applications filed by the petitioner.

25. It is further submitted on behalf of respondent No.2/complainant that the material was supplied to the petitioner under different Invoice Bills on different occasions and the same are duly reflected in the Ledger Account (Ex.C1 and C4), which have been attached along with the reply to the application as Annexure R-1, and thus the transaction is not the single; rather these are different transactions. It is further contended that till date, not even a single rupee has been paid by the petitioner and as such, he does not deserve any concession of concurrent of sentence under Section 427 of the Cr.P.C.

26. Heard both sides.

27. Perusal of Ex.C1 and C4 (Annexure R-1) makes it apparently clear that the material was supplied under various bills on more than 200 (two hundred) different occasions as per the requirement of the petitioner w.e.f. 01.04.2011 to 16.11.2012 and thus, the same cannot be construed as a single transaction; rather these are different transactions during the business dealings between the parties and the petitioner is neither inclined to make the payment of compensation; nor willing to undergo the total sentence, rather he wants to escape from the entire liability simply by undergoing the sentence of six months' simple imprisonment, which shows that the intentions of the petitioner are not bona fide and not in the interest of business dealings. Such incidents are increasing day-by-day and in case undue sympathy is shown to the persons like the petitioner, then the faith of the Society shall be eroded systematically and that will be too disastrous for the economy of the country.

28. Consequently, there is no merit in the present applications for making the sentence of the petitioner concurrent in all the cases and, therefore, all the above eight applications are also dismissed.

(emphasis supplied)

13. Admittedly, the transaction in each of the complaints is between the same parties and regarding the same ledger/account. The three cheques leading to the filing of two complaints were issued within a span of a few days and the complaints themselves had also been filed within a gap of a couple of months. In fact, as per the orders dated 10.10.2019 (Annexure P-7 and P-8) and the statement of the complainant of the even date (Annexure P-9), the Court has held and the complainant has agreed that the complaint was between the same parties and the allegations were also similar. The complainant did not have any objection if the cross-examination conducted in one complaint was read in the other complaint as well. Therefore, the Court had held that the evidence recorded till date in one complaint was to be read in both the complaints verbatim.

Further, even if the proceedings in both the complaints were to go on separately and two judgments of conviction were recorded, in view of the judgments **In Re:** (supra), **Shyam Pal** (supra), **Benson** (supra) **V.K. Bansal** (supra) and **Ravinder Singh** (supra) the sentences would in all probability, be ordered to run concurrently the transactions being the same.

14. On the other hand, the facts in the judgment in **K. Padamaja Rani** (supra) are different. Firstly that was a case pertaining to four

cases. These were several transactions over a period of time for supply of raw material for which the petitioner had tendered cheques towards payments. In the instant case, there were three cheques issued within a span of a few days which culminated in two complaints filed within a span of a couple of months. Similarly, the judgment in **Vishwanath Jha** (supra) will not come to the aid of the respondent. Firstly, **V.K. Bansal** (supra) has not been considered. Secondly, the Court has not considered the anomalous situation that would arise where instead of multiple cheques being issued for the Rs.12,42,289/- debt a single cheque had been issued. If a single cheque had been issued for the entire debt, then there would have been a single trial and the imposition of a single sentence which would not have exceeded two years.

Even otherwise, if the substantive sentence is ordered to run concurrently nothing prohibits the Court from imposing a sentence of fine to be paid as compensation upto twice of the cheque amount for all the cheques comprising different complaints as is evident from a plain reading of Section 138 of the Negotiable Instruments Act along with a judgment in **Gaurav Khullar Versus Eleven V Industries & others, decided on 28.02.2023, CRR-1631-2016.**

15. In view of the above discussion, no useful purpose would be served by permitting the continuance of two separate trials and therefore, it would be just and expedient if the trial emanating out of complaint No.COMP/9225/2018 dated 05.07.2018 and the summoning order dated 06.07.2018 be clubbed with the trial emanating out of complaint No.COMP/6718/2018 dated 15.05.2018 and summoning order dated

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17.05.2018. The Trial Court would then proceed to hear the arguments in each case and pass one judgment.

16. However, it is made clear that this Court has not expressed any opinion as to whether the three cheques had been issued for the discharge of the entire debt as per the ledger maintained or if the third cheques for an amount of Rs.11 lakhs had been issued as a part discharge of the ledger liability in view of the two cheques that had been dishonoured earlier.

(JASJIT SINGH BEDI)
JUDGE

17.08.2023
JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No